PART IV

Section 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

PUBLIC HEALTH LABOUR AND MUNICIPAL ADMINISTRATION SECRETARIAT

ORDER

Bangalore, dated 6th July 1965.

S.O. 2778.—WHEREAS by State Government Order No. LLH 491 ILD 59, dated 25th November 1959, the Industrial Dispute between the Workmen and the Management of A. K Appanna Setty & Sons and other Rice and Oil Mills of Tumkur was referred to the Industrial Tribunal, Bangalore for adjudication;

AND WHEREAS before the said Industrial Tribunal, a complaint was made under Section 33-A of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), by (1) Huchamma, (2) Mallakka, (3) Dasappa, (4) Mariappa, (5) Gangaiah alleging that they were wrongfully dismissed from service;

AND WHEREAS the said Industrial Tribunal, adjudicated upon the said complaint and submitted its award to the State Government as required under Section 15 read with Section 33-A of the said Act;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Mysore, hereby directs the publication of the said award in the *Mysore Gazette*.

[No. PLM 322 LLD 65.]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT, *Under Secy.*

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated, 23rd May 1965.

Present

Sri R. Krishna Setty, B.A., LL.B., Presiding Officer.

Complaint No. 5 of 1960
in I. T. No. 25 of 1959.

Complainants.—(1) Huchamma, (2) Mallakka, (3) Dasappa, (4) Mariyappa and (5) Gangaiah, Employees of Gowri Shankar Oil Mills, Madhugiri Road, Tumkur.

Vs.

Opposite Party.—Management of Sree Gowri Shankar Oil Mills, Madhugiri Road, Tumkur.

Representations.—The Complainants absent and nobody represented them. The Opposite Party was represented by Sri G. S. Ullal, Advocate.

Government Reference G. O. No. LLH 491 ILD 59, dated 25th November 1959.

AWARD.

An industrial dispute between the workmen and management of Sri A. K. Appanna Setty Rice and Oil Mills, Tumkur, and nine other factories at Tumkur existed in regard to wages, benefit of Provident Fund Scheme, Dearness Allowance, uniforms, leave with wages, festival and national holidays and wages for weekly holidays. In exercise of the Powers conferred upon them under Section 10(1)(d) of the Industrial Disputes Act, 1947, the Government of Mysore by their Order No. LLH 491 ILD 59, dated 25th November 1959 as amended by their corrigendum of even number dated 3rd March 1960, referred the aforesaid dispute to this tribunal presided over by Sri D. H. Chandrasekharaiya, B.A., LL.B., for adjudication. In the vacancy caused by the terimination of the services of Sri D. H. Chandrasekharaiya, Sri S. S. Malimath, B.A., LL.B., was appointed as Presiding Officer by the Government in their order No. LLH 112 LLE 60, dated 5th July 1960 read with Order No. LLH 170 LLE 60, dated 13th July 1960. The matter therefore came before him for adjudication. The District Mills and Factories Workers' Union represented by its President Sri K. Mallanna, filed the claim statement on 29th January 1960 making several demads. The important ones related to the increase in daily wages, special wages for night work, yearly bonus, permanancy of employment, admission to Provident Fund, Dearness Allowance, uniforms and wages on festival holidays and even on weekly holidays. The managements of 9 Oil Mills and one Brick and Tile Works, Tumkur, resisted their claim on more grounds than one. Sri . .

Chandrasekharaiya, on the basis of the pleadings, had framed 5 issues, and the 4th issue was as follows :—

> "4. Is there no industrial dispute for the reason that the majority of the employees have not joined it ?"

The managements insisted that the 4th issue should be taken up for preliminary hearing. Sri D. H. Chandrasekharaiya rejected that request. The management in writ petition No. 1327 of 1960 on the file of the High Court of Mysore impeached the legality of that order of rejection to try the 4th issue as a preliminary issue. By their Order dated 12th July 1961 the High Court of Mysore directed this Tribunal to try the 4th issue in the first instance. Accordingly Sri S. S. Malimath heard the parties on that preliminary issue and held on 30th April 1962 that there was an industrial dispute and proceeded further. During the pendency of the said dispute the Complainants Huchamma, Mallakka, Dasappa, Mariyappa and Gangaiah, employees of Sree Gowri Shankar Oil Mills, Tumkur, Sl. No. 6 of the II Party in that dispute, presented a complaint dated 23rd November 1960 under Section 33A of the Industrial Disputes Act, 1947, alleging that their employer had wrongfully dismissed them from service. Sri S. S. Malimath, my predecessor in office held the enquiry into that complaint (Complaint No. 5 of 1960) and came to the conclusion that the order of dismissal was illegal and therefore directed the Opposite Party to reinstate them in their former posts and to pay them their back wages. In the meanwhile on 2nd November 1962 Sri S. S. Malimath had passed an award on other points. In Writ Petition Nos. 54 of 1963 and 132 of 1963 the Opposite Party had questioned the correctness of the finding on the 4th issue and the legality of the order on the complaint. The High Court by their order dated 1st April 1965 upheld those contentions and quashed the orders of this tribunal dated 30th April 1962 as well as the award dated 12th November 1962 and remanded back to this tribunal for disposal according to law.

2. After receipt of the said order from the High Court, a Notice was issued to Mr. K. Mallanna the President of the Mills and Factories' Workers Union, who was representing the Complainants and also the workmen of the II Party establishments. Sri Mallanna on whom the burden of proving the 4th issue in I. T. No. 25 of 1959, lay, did not appear though served. On the other hand he sent a Memo dated 17th June 1965 to the effect that the Union was not in existence and that he has no longer any authority to represent the employees including the Complainants in the case and that the tribunal might proceed to pass orders according to law. Since the I Party Union was not interested in the prosecution of the said dispute and has not shown that

the dispute referred to this tribunal was an industrial dispute, I was of opinion that the dispute continued to be an individual dispute and that this tribunal has no jurisdiction to deal with the matter. Accordingly I made an award rejecting the Reference.

3. Sri G. S. Ullal the advocate for the Opposite Party contended that in view of my finding on the 4th issue in the said industrial dispute, the present complaint cannot be entertained under Section 33A of the industrial Disputes Act, 1947. I am of opinion that this contention is well founded and ought to prevail. In Gowri Shankar Oil Mills *vs* the Industrial Tribunal and others reported in 1962 II LLJ 527, the interpretation of Section 33A and 33 (2) (b) had come up for consideration, before their Lordships of the Mysore High Court. It was held therein that it was clear from the provisions of Section 33 (2) (b) of the Industrial Disputes Act, that before an employee could complain that its provisions have been contravened, it should be established that "a proceeding in respect of an industrial dispute" was pending before the industrial tribunal when the employees were dismissed. The requirement to proviso to sub-section 2 of Section 33 that a workman should be discharged only if he had been paid wages for one month and an application has been made thereafter for approval of the action taken by the employer, can have no application if no proceeding in respect of an industrial dispute is pending before a tribunal when the employee is dismissed. What gives jurisdiction to the tribunal to enquire into a complaint made under Section 33A is the pendency of a proceeding in respect of an industrial dispute before it at the stage when the employee is dismissed. It was therefore clear that before the industrial tribunal could adjudicate upon the complaint made by the employee under Section 33A of the Industrial Disputes Act, it had to record a positive finding that there was a proceeding pending before it in respect of an industrial dispute. According to this decision if an industrial dispute is not pending before this tribunal, a complaint under Section 33A is not maintainable. In I. D. No. 25 of 1959 I have held that the dispute referred to this tribunal for adjudication was not an industrial dispute and therefore this tribunal had no jurisdiction to deal with the matter and so rejected the Reference. It was during the pendency of such a dispute that the present complaint had been filed under Section 33A of the Act. In as much as an industrial dispute was not pending before me when this complaint was made, it follows that a petition under Section 33A is liable to be rejected and is accordingly rejected.

R. KRISHNA SETTY,
Presiding Officer,
Industrial Tribunal.

GOVERNMENT OF MYSORE.

(LABOUR DEPARTMENT.)

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Sri A. K. Appanna Setty & Sons, Rice & Oil Mills, Tumkur and 9 other Factories at Tumkur.

Award of the Industrial Tribunal, Bangalore—published.

Read the following papers :—

1. Letter No. IT. 440/65-66, dated 19th June 1965, from Sri R. Krishna Setty, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated 19th June 1965.

Present:

Sri R. Krishna Setty, B.A., LL.B. ... *Presiding Officer.*

I. T. No. 25 of 1959.

I Party:

The workmen of :—

1. Sri A. K. Appanna Setty & Sons, Rice & Oil Mills, Sira Road, Tumkur,
2. Sri Mahadeva Rice & Oil Mills, B. H. Road, Tumkur,
3. Sri Ananthanath Oil Mills, B. H. Road, Tumkur,
4. Gubbi Oil Mills, B. H. Road, Tumkur,
5. Sri Ganapathi Oil Mills, Bheemasandra, B. H. Road, Tumkur,
6. Sri Govrishankara Oil Mills, Madhugiri Road, Tumkur,
7. Sri Mahaveera Rice & Oil Mills, Sira Road, Tumkur,
8. Sri Srikanteswara Oil Mills, Sira Road, Tumkur.
9. Sri Santhinath Rice & Oil Mills, Sira Road, Tumkur,
10. Tumkur Brick & Tile works, Tumkur.

II Party:

The Management of :—

1. Sri A. K. Appanna Setty & sons, Rice & Oil Mills, Sira Road, Tumkur.
2. Sri Mahadeva Rice & Oil Mills, B. H. Road, Tumkur.
3. Sri Ananthanath Oil Mills, B. H. Road, Tumkur.
4. Gubbi Oil Mills, B. H. Road, Tumkur.
5. Sri Ganapathi Oil Mills, Bheemasandra, B. H. Road, Tumkur.
6. Sri Govrishankara Oil Mills, Madhugiri Road, Tumkur.
7. Sri Mahaveera Rice & Oil Mills, Sira Road, Tumkur.
8. Sri Srikanteswara Oil Mills, Sira Road, Tumkur.
9. Sri Santhinath Rice & Oil Mills, Sira Road, Tumkur.
10. Tumkur Brick & Tile works, Tumkur.

Appearances

For the I Party : None Present.

For the II Party: Sri V. K. Balasundaram, B.A., LL. B., for the Managements of No. 1, 2, 5, 7, 8, 9 and 10.
Sri A. K. K. Tareen for the Management No. 6.
Managements Nos. 3 and 4-Absent.

Reference : G. O. No. LLH 491 LLD 59, dated 25th November 1959.

AWARD

An Industrial Dispute between the workmen and the Management of Sri A. K. Appanna Setty and Sons, Rice and Oil Mills, Tumkur, and 9 other Factories at Tumkur existed in regard to wages, benefit of Provident Fund Scheme, Dearness Allowance, Uniforms, leave with wages on festival and National holidays and wages for weekly holidays. In exercise of the powers conferred under Section 10 (1) (d) of the Industrial Disputes Act, 1947, (Central Act XIV of 1947), the Government of Mysore by their Order No. LLH 491 LLD 59, dated 25th November 1959 as amended by their corrigendum of even Number and dated 3rd March 1960 referred the aforesaid dispute to this Tribunal presided over by Sri D. H. Chandrasekharaiya, B.A., LL.B., for adjudication. In the vacancy caused by the termination of the services of Sri D. H. Chandrasekharaiya, Sri S. S. Malimath, B.A., LL.B., was appointed as Presiding Officer by the Government in their order No. LLH 112 LLE 60, dated 5th July 1960 read with Order No. LLH 170 LLE 60, dated 13th July 1960. The matter, therefore, came up before him for adjudication. The District Mills and Factories Workers' Union represented by its President, Sri K. Mallanna, filed the claim statement on 29th January 1960 making several demands. The important ones related to the increase in daily wages, special wages, for night work, yearly bonuses, permanency of employment, admission to provident fund, dearness allowance, uniforms and wages on festival holidays and even on weekly holidays. The Managements of nine Oil Mills and one brick and tile works, Tumkur resisted that claim on more grounds than one. Sri D. H. Chandrasekharaiya, on the basis of the pleadings, had framed 5 Issues and the 4th Issue was as follows :—

> "Is there no industrial dispute for the reason that the majority of the employees have not joined it."

The Managements insisted that this 4th Issue should be taken up for preliminary hearing. Sri D. H. Chandrasekharaiya rejected that request. The Managements in Writ Petition No. 1327 of 1960 on the file of the High Court of Mysore impeached the legality of that order of rejection to try the 4th Issue as a preliminary Issue. By their Order dated 12th July 1961, the High Court of Mysore directed the Tribunal to try the 4th Issue in the first instance. Accordingly, Sri S. S. Malimath, heard the parties on that preliminary Issue and held on 30th April 1962 that there was an industrial dispute and proceeded further. Finally on 12th November 1962, he passed an Award on other points. In Writ Petition No. 54 of 1963 on the file of the Hon'ble High Court, Sri Govrishankar Oil Mills, one of the Managements of the II Party, questioned the correctness of this finding on the ground that the Tribunal did not address itself properly to the jurisdictional issue *viz.*, Whether the dispute referred is an industrial dispute or an individual dispute and as such, the entire Award should be quashed. The High Court by their Order dated 1st April 1965 upheld that contention and quashed the order of this Tribunal dated 30th April 1962 as well as the Award dated 12th November 1962 and remanded the case back to this Tribunal for disposal according to law.

(2) After the receipt of the said order from the High Court, notices were issued to the President of the I Party and the Managements of the II Party. On behalf of the 1st, 2nd, 5th, 7th, 8th, 9th and 10th Members of the II Party, Sri V. K. Balasundaram, advocate, filed a Memo to the effect that neither those Members nor their employees were parties to the Writ Petition in No. 54 of 1963, that the said Members were bound by the Award already passed and as a matter of fact, have implemented the terms thereof and therefore those members were not necessary parties for further proceedings. Nobody represented the 3rd and 4th Managements, though they were served. The 6th Management, Sri Govrishankar Oil Mills was represented by Sri G. S. Ullal and Sri A.K.K. Tareen. They contended that the I Party has got to prove the IV Issue *viz.*, That the dispute referred to this Tribunal for adjudication is an industrial dispute and as such this Tribunal has got jurisdiction to deal with the matter.

(3) Notice was sent to Sri Mallanna, the President of the I Party Union, for his appearance so that he might adduce evidence on the IV Issue. But Sri Mallanna who is not only the President of the I Party Union, but also an Advocate sent a Memo dated 17th June 1965 to the effect that the said Union is not in existence

and that he has no longer any authority to represent the employees in the case and that the Tribunal might proceed to pass orders according to law.

(4) Now that the President of the I Party admits that the Union is no longer in existence and that, therefore, he was not going to represent either that Union or the employees, it follows that the workmen are not interested in the prosecution of this case. The burden of proving the IV Issue is on the workmen. Since the workmen have lost all interest in the case, they are not adducing any evidence. I must therefore hold the IV Issue against them.

(5) In view of the fact, that the I Party Union is not interested in showing that the dispute referred to this Tribunal is an Industrial Dispute, it must follow that the dispute continues to be an individual dispute and that this Tribunal has no jurisdiction to deal with it.

(6) For these reasons, I make an Award rejecting the Reference.

R. KRISHNA SETTY,
Presiding Officer, Industrial Tribunal,
Bangalore.

ORDER

Bangalore, dated the 5th July 1965.

S O. 2779.—WHEREAS by State Government Order No. LLH 491 LLD 59, dated 25th November 1959, the Industrial Dispute between the Workmen and the Management of Sri A. K. Appanna Setty & Sons, Rice & Oil Mills, Tumkur and 9 other Factories at Tumkur was referred to the Industrial Tribunal, Bangalore, for adjudication;

AND WHEREAS the Industrial Tribunal has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

[No. PLM 320 LLD 65.]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT, *Under Secy.*